

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT ERNEST GALLEGOS, SR.,

Petitioner,

No. CIV S-04-2741 MCE GGH P

vs.

TOM L. CAREY, Warden,

Respondent.

ORDER

A joint scheduling statement in this matter was filed on April 8, 2005, pursuant to the court's order filed February 8, 2005.¹ After reviewing the joint statement, the court issues the following ORDERS:

1. Petitioner shall notify the court and respondent by no later than June 10, 2005, whether or not he intends to proceed on the existing petition and, if so, by that date must file any supplemental memorandum of points and authorities;

2. Should petitioner choose to amend the petition and proceed on exhausted claims only, petitioner must both inform the court of such an intent and must file an amended exhausted-claims-only petition on or before June 10, 2005, along with any supplemental points

¹Petitioner's counsel was substituted in by order filed March 2, 2005; the court granted substituted counsel's request for an extension of time to respond to the February 8, 2005 order by order filed March 9, 2005.

1 and authorities;

2 3. Respondent has identified one unexhausted claim of the eleven raised in the
3 original petition; petitioner's counsel does not indicate whether or not she concedes the point.
4 Should petitioner's counsel identify any unexhausted claims which petitioner intends to exhaust,
5 petitioner shall identify all claims, exhausted and unexhausted and shall file an amended
6 exhausted-claims-only petition if the original petition does not contain only exhausted claims or
7 if it does not contain all of his exhausted claims, and shall move the court to hold the proceedings
8 in abeyance pending exhaustion of state court remedies as to the unexhausted claims on or before
9 June 10, 2005, if, in light of Rhines v. Weber, ___ U.S. ___, 125 S. Ct. 1528 (2005), good cause
10 for having failed to exhaust all claims before filing in federal court can be shown. If a stay is
11 granted, petitioner must immediately pursue state court exhaustion and, upon said exhaustion,
12 file an amended petition containing all claims newly and previously exhausted, after which any
13 stay will be lifted and this matter will proceed;

14 4. Respondent must file a motion to dismiss within 30 days, or an answer within
15 60 days, of either the filing of an amended petition on which petitioner elects to proceed or upon
16 the filing of supplemental points and authorities in support of the existing petition. If a motion is
17 filed, petitioner must file a response within 30 days and respondent will have 15 days to file a
18 reply. If an answer is filed, petitioner will have 30 days to file a reply (formerly designated a
19 traverse);

20 5. If an answer is filed, respondent will have 30 days from the time a reply is due
21 from petitioner to file a motion for discovery;

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